



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,321	03/28/2005	Tatsuo Yamaguchi	059277-0124	5370

22428 7590 06/10/2009
FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

GREECE, JAMES R

ART UNIT	PAPER NUMBER
----------	--------------

2873

MAIL DATE	DELIVERY MODE
-----------	---------------

06/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/525,321	Applicant(s) YAMAGUCHI ET AL.	
	Examiner JAMES R. GREECE	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/28/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 10-17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 16, 18, 19, 21, 24 and 27 of U.S. Patent No. 7,270,413. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the application disclose the same subject matter. Though the limitations are worded in a slightly different manner and the organization of the limitations are not in the same particular order as the application, the limitations are all present in the claims of the patent and are therefore anticipatory. See below.

Regarding claim 10, Hirohara’s claims correlate with those of the applicant in the following manner (Hirohara’s claims in parenthesis);

Art Unit: 2873

A correction data measuring apparatus comprising: an arithmetic part for obtaining an optical characteristic of a subject eye by performing a Zernike analysis on the basis of inclination angles of light fluxes obtained by a first light receiving part (claim 1), wherein the arithmetic part receives measurement data indicating a refractive power distribution of the subject eye and obtaining lower order aberrations and higher order aberrations on the basis of the measurement data (claim 1); judges whether the higher order aberrations have a specified values or higher (claim 19) and finds out, in a case where the higher order aberrations have the specified values or higher (claim 19), lower order aberration quantities where a Strehl ratio becomes maximum or a phase shift (PTF) becomes substantially zero while the lower order aberration quantities corresponding to the defocus amount and/or the astigmatism component is changed slightly and, obtains, based on the found lower order aberration quantities in which the higher order aberrations are taken into consideration, appropriate correction data suitable for the subject eye (claim 24).

Regarding claim 11, Hirohara's claims correlate with those of the applicant in the following manner (Hirohara's claims in parenthesis);

wherein in a case where higher order spherical aberrations or asymmetrical higher order coma aberration quantities have the specified value or higher, the arithmetic part changes the lower order aberration quantities corresponding to defocus, and obtains the appropriate correction data suitable for the subject eye (claim 16).

Regarding claim 12, Hirohara's claims correlate with those of the applicant in the following manner (Hirohara's claims in parenthesis);

Art Unit: 2873

wherein in a case where higher order spherical aberration quantities have the specified values or higher, the arithmetic part changes the lower order aberration quantities corresponding to astigmatism components, and obtains the appropriate correction data suitable for the subject eye (claim19).

Regarding claim 13, Hirohara's claims correlate with those of the applicant in the following manner (Hirohara's claims in parenthesis);

wherein in the arithmetic part changes the lower order aberration quantities to increase [[a]] the Strehl ratio and obtains the appropriate correction data suitable for the subject eye (claim 21).

Regarding claim 14, Hirohara's claims correlate with those of the applicant in the following manner (Hirohara's claims in parenthesis);

wherein in the arithmetic part changes the lower order aberration quantities to decrease [[a]] the phase shift and obtains the appropriate correction data suitable for the subject eye (claim 21).

Regarding claim 15, Hirohara's claims correlate with those of the applicant in the following manner (Hirohara's claims in parenthesis);

wherein the arithmetic part stores correction data obtained by the arithmetic part in a memory or displaying displays it on a display part (claim14).

Regarding claim 16, Hirohara's claims correlate with those of the applicant in the following manner (Hirohara's claims in parenthesis);

Art Unit: 2873

wherein the arithmetic part obtains a luminous distribution image of a Landolt's ring or an arbitrary image on the basis of the correction data obtained by the arithmetic part and displays it on the display part (claim 18).

Regarding claim 17, Hirohara's claims correlate with those of the applicant in the following manner (Hirohara's claims in parenthesis);

a first illuminating optical system including a first light source for emitting a light flux of a first wavelength, for providing illumination by condensing a first illuminating light flux from the first light source on a vicinity of a retina of the subject eye (claim 27); and a first light receiving optical system including a first conversion member for converting a reflected light flux reflected from the retina of the subject eye into at least 17 beams, and a first light receiving part for receiving the plural light fluxes converted by the first conversion member as a first received light signal, for guiding the reflected light flux to the first light receiving part (claim 1), wherein the arithmetic part receives the first received light signal as the measurement data, and performs the Zernike analysis on the basis of the inclinations of the light fluxes obtained by the first light receiving part to obtain the lower order aberrations and the higher order aberrations as the optical characteristic of the subject eye (claim 1).

Response to Arguments

3. Applicant's arguments with respect to claims 10-17 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 2873

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter:

The prior art taken singularly or in combination fails to anticipate or fairly suggest the limitations of the independent claims, in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper. These reasons for allowable subject matter are contingent on proper correction of the Obviousness double patenting rejections.

In regard to (in)dependent claim 10, the prior art taken either singly or in combination fails to anticipate or fairly suggest the particular structure and feature of optimizing the particular values when the higher order aberrations reach a sufficient value; recited together in combination with the totality of particular features/limitations recited therein.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2873

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES R. GREECE whose telephone number is (571)272-3711. The examiner can normally be reached on M-Th 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. R. G./
James R Greece
Examiner, Art Unit 2873
6/5/2009

/Ricky L. Mack/
Supervisory Patent Examiner, Art Unit 2873